

## **Exhibit G**

Deposition of Arthur R. Hayes, III

(Pages 20-23, 26-27, 34-39)

(Exhibit 2 – Oversized Map, submitted  
under separate cover)

(Exhibit 3 – Oversized Map, submitted  
under separate cover)

(Exhibit 4)

## **ORIGINAL TRANSCRIPT**

**UNITED STATES DISTRICT COURT**

**DISTRICT OF MASSACHUSETTS**

**CIVIL ACTION NUMBER: 04-11924-RGS**

IAN J. BROWN, JAMES BROWN AND BARBARA BROWN,

Plaintiffs,

VS

UNITED STATES OF AMERICA, VERIZON NEW ENGLAND,  
INC. and BOSTON EDISON COMPANY d/b/a NSTAR  
ELECTRIC,

Defendants.

~~~~~

30(b) (6) DEPOSITION OF U.S. NAVY BY  
ARTHUR R. HAYES, III, taken on behalf of Verizon  
New England, Inc., pursuant to the applicable  
provisions of the Massachusetts Rules of Civil  
Procedure, before Ayako Odanaka, Notary Public,  
Certified Shorthand Reporter and Registered  
Professional Reporter within and for the  
Commonwealth of Massachusetts, at the Offices of  
Prince, Lobel, Glovsky & Tye, LLP, 585  
Commercial Street, Boston, Massachusetts, on  
April 28, 2005, at 11:14 a.m., as follows:



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1 Force?

2 A. Correct.

3 Q. So there would be no other deeds or  
4 transferred documents from other  
5 individuals to the Navy.

6 A. Correct.

7 Q. Can you show me -- or first, what  
8 interest does the Navy have in property  
9 over which Hartwell Road runs?

10 A. Well, the portion of Hartwell Road  
11 that runs through the transferred property  
12 Navy owns in fee, the underlying land of  
13 the road.

14 Q. And if we could go to Exhibit  
15 Number 2 -- Hayes Exhibit Number 2 first,  
16 could you point on this map and also state  
17 for the record where you're pointing to  
18 the area of Hartwell Road which runs  
19 through the property you've just  
20 referenced?

21 A. Okay, beginning in the northeast  
22 portion of the property, boundary  
23 reference, course Number 9, Hartwell Road  
24 enters the property running southwesterly



1 to a boundary reference course Number 18.  
2 And that's the only portion of Hartwell  
3 Road that the Navy owns in fee.

4 Q. Are you aware of whether Hartwell  
5 Road is designated as a public way under  
6 Massachusetts state law?

7 A. That I'm not sure of.

8 Q. You don't know?

9 A. No.

10 Q. Do you know whether there are any  
11 restrictions on that piece of road as to  
12 who may travel along Hartwell Road?

13 A. No, I don't know.

14 Q. Do you know whether the Navy  
15 maintains that road?

16 A. No, I don't know. I don't have  
17 those records.

18 Q. Do you know whether the Navy has  
19 granted the Town of Bedford an easement  
20 over the -- over Hartwell Road?

21 A. No, we haven't.

22 Q. You have not?

23 A. We have not.

24 Q. And what is the basis of your



1 statement that the Navy has not granted  
2 the Town of Bedford an easement?

3 A. If Navy did, there would be noted  
4 on the summary map. If I could reference  
5 the utilities easements Navy needed up  
6 here for whatever reason, so we went to  
7 the property owner, in this case,  
8 Massachusetts Port Authority, and acquired  
9 an easement, utility easement.

10 If we had turned around to the Town  
11 of Bedford and granted them a right-of-way  
12 easement for that portion of Hartwell  
13 Road, there would be a note with the date  
14 and whether it was in perpetuity or  
15 exactly what the transfer information was  
16 or the easement grant. It would be noted.

17 Q. If the Air Force had granted an  
18 easement over Hartwell Road before it  
19 transferred this property to the Navy,  
20 would that be indicated on this map?

21 A. No, no it wouldn't.

22 Q. If the Air Force had granted such  
23 an easement would that be noted anywhere  
24 in your files?



1 A. No, it wouldn't.

2 Q. Would it be noted on the form that  
3 you referenced, the transfer form, from  
4 the Air Force to the Navy?

5 A. No, it would not.

6 Q. So are you able to determine  
7 whether the town has a right-of-way  
8 easement over Hartwell Road at this time?

9 A. No, I'm not.

10 Q. You indicated that -- or what could  
11 you -- I may have already asked this  
12 question but --

13 A. Okay.

14 Q. What is the legal interest that the  
15 government has in this portion of Hartwell  
16 Road?

17 A. Ownership and fee in the underlying  
18 road.

19 Q. And the basis of your statement  
20 that the ownership interest is in fee,  
21 what is the basis of your knowledge?

22 A. Just going back from when the Air  
23 Force first acquired it back in -- take a  
24 quick look, '52, February 25th, '52.



1 Q. Mr. Hayes, in Exhibit Number 2,  
2 Hartwell Road appears to pass south of the  
3 portion you've indicated was retained by  
4 the Air Force when it transferred to the  
5 Navy; is that correct?

6 A. (Witness viewing document). That's  
7 correct.

8 Q. So to your knowledge, does the Navy  
9 own that portion of Hartwell Road, which  
10 is immediately south?

11 A. Yes.

12 Q. And south of the cut out portion  
13 that the Air Force retained?

14 A. Yes, that's correct.

15 Q. Okay. Mr. Hayes, if the department  
16 of Navy had subsequently transferred any  
17 of the land which is designated as Tract  
18 A101 in Exhibit Number 3, would you have a  
19 record of that transfer?

20 A. No.

21 Q. And when I say subsequently, I say  
22 subsequently to the date of Exhibit Number  
23 3, which appears to be January 1952.

24 A. Yeah -- no, because this is an Air



1 Force map.

2 MR. CALLAHAN: "This" being,  
3 what exhibit are you referring to?

4 MR. CHARNAS: Exhibit 3.

5 THE WITNESS: Exhibit 3.

6 BY MR. LEWIN:

7 Q. Mr. Hayes, what is the date of  
8 Exhibit Number 2?

9 A. (Witness viewing document).

10 9/9/74, 1974.

11 Q. There appear to be some date  
12 references above that. What are those  
13 date references to?

14 A. (Witness viewing document). Well,  
15 they were amendments to -- well, amendment  
16 Number 2, 36.65 acre transferred from Air  
17 Force, that was dated June 7th, 1977, even  
18 though that was the transfer in March of  
19 '77. And through the legal description  
20 and the transfer documentation, this map  
21 was created. Then there were permits  
22 added, which is identified as Amendment 3  
23 in June 8th day, '79.

24 Perimeter of station was surveyed



1 demonstrates that pole Number 37 was  
2 located on land owned by the Navy.

3 A. Yes.

4 Q. And that's true as of January 2nd,  
5 2002.

6 A. I don't think this is dated. I  
7 can't really say that.

8 Q. When you say "this," you're  
9 pointing to Exhibit 4?

10 A. Exhibit 4.

11 Q. Just bear with me a moment. I'm  
12 just about finished.

13 And you've told us that the Navy  
14 owns a section of Hartwell Road,  
15 specifically the section that runs through  
16 the gray area with the green border around  
17 it, which is part of Exhibit 3; is that  
18 right?

19 A. That's correct.

20 Q. And is it fair to say that the  
21 Navy has owned that -- Strike that.

22 So the Navy or Air Force had owned  
23 that land in January 4th of 2002.

24 A. Navy.



1 Q. Is it fair to say that -- Well,  
2 strike that.

3 For how long has the Navy owned  
4 that land, that is where the Hartwell Road  
5 is within that green bordered area on  
6 Exhibit 3?

7 A. Since March, 1977.

8 Q. And before March of 1977, is it  
9 fair to say that the Air Force owned that  
10 section of Hartwell Road?

11 A. That's correct.

12 Q. Is it fair to say that the Air  
13 Force owned that section of Hartwell Road  
14 since approximately 1952?

15 A. That's correct.

16 MR. CHARNAS: That's all I  
17 have. Thank you, sir.

18 THE WITNESS: You're  
19 welcome.

20 MR. CALLAHAN: Just have a  
21 few questions.

22 EXAMINATION

23 BY-MR. CALLAHAN:

24 Q. Where is your office located?



1 A. Just south of Philadelphia airport  
2 in Tinicum Township.

3 Q. Have you ever been to the Hanscom  
4 Air Force Base?

5 A. No.

6 Q. When you need to interact with  
7 people at Hanscom Air Force Base or people  
8 -- Strike that. Let me back up.

9 Are there still Navy personnel  
10 situated at the Hanscom Air Force base  
11 location?

12 A. As far as I know.

13 Q. Do you have occasion to interact  
14 with any of the people there in connection  
15 with your duties as a realty specialist?

16 A. No.

17 Q. The document that you identified as  
18 DD1354, the transfer document, is that  
19 similar to what a lay person would  
20 understand as kind of a transfer deed,  
21 deed of transfer?

22 A. Yes. Yes, because it's  
23 transferring the Air Force's right to that  
24 portion of property, and they transferred



1 it from their agency to the Navy.

2 Q. Have you had an opportunity to  
3 review that deed of transfer or that  
4 transfer document prior to today's  
5 deposition?

6 A. 1352 [sic], yes.

7 Q. Are you aware of any exceptions or  
8 restrictions or conditions placed on that  
9 transfer from the Air Force to the Navy?

10 A. No.

11 Q. And wouldn't it be true that if  
12 there were any such restrictions or  
13 conditions, they would have been -- they  
14 would be identified on the map identified  
15 as Exhibit 2?

16 A. That's correct.

17 Q. Do you know why the property was  
18 transferred from the Air Force to the  
19 Navy?

20 A. No.

21 Q. Now, I noticed on Exhibit 2 there's  
22 a legend that indicates that the  
23 jurisdiction over the approximately 36  
24 acres of fee owned was ceded to the United



1 States of America, but upon the express  
2 condition that the Commonwealth of  
3 Massachusetts shall retain concurrent  
4 jurisdiction with the United States of  
5 America in and over said lands.

6 A. That's right.

7 Q. Can you tell me what that means?

8 A. Basically the government is  
9 responsible for placing fire protection but  
10 the commonwealth reserves the right to  
11 still serve due process if they have to go  
12 on the property to arrest somebody for a  
13 crime.

14 Q. And that relates to the land that  
15 was transferred -- Strike that.

16 That particular legend that we were  
17 just discussing relates to the transfer of  
18 about 36 acres from the Air Force to the  
19 Navy.

20 A. Yes.

21 Q. Back in 1977, I believe.

22 A. Correct.

23 Q. Are you aware of any restrictions  
24 that the Navy has placed upon travel by



1 the general public over the portion of  
2 Hartwell Road that falls within the tract  
3 identified on Exhibit 2?

4 A. No.

5 Q. Have you, in the course of  
6 preparing for this deposition or in your  
7 review of the file, the files relating to  
8 this property, have you seen any records  
9 relating to the installation of a  
10 guardrail along Hartwell Road?

11 A. No, I have not.

12 Q. Would there be any records that  
13 you're aware of -- Strike that.

14 MR. CHARNAS: Can we go off  
15 the record for a second?

16 MR. CALLAHAN: Sure.

17 (Discussion off the record).

18 BY MR. CALLAHAN:

19 Q. Are you aware, Mr. Hayes, of any  
20 records obtained or kept by the Navy,  
21 which show whether or not the guardrail  
22 along Hartwell Road was in existence at  
23 the time the Navy acquired its right title  
24 and interest in the property?

